IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 962 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJPIPLA VIBHAG KHADI GRAMODYOG VIKAS SANGH & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR CHIRAG B PATEL for Petitioner(s) : 1 - 2.
MS CHANDARANA AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/07/2006

ORAL JUDGMENT

1. In the present petition, the petitioners have challenged an order dated 10th July, 2005. By the impugned order, the respondent no.1 was pleased to

cancel the recognition of the Ashram Shala being run by the petitioners. In the impugned order respondent no.1 has discussed several aspects and passed a reasoned order. In view of the conclusions which I have reached after hearing learned advocates for the parties, it is not necessary to deal with all aspects of the matter in this judgment.

1.1 Suffice it to say that the petitioners had made allegations of personal malafides against respondent no.3 the then Minister of Tribal Development of the State Government. It is specifically the case of the petitioners that at one stage the case of the petitioners was being considered for grant of necessary recognition. The petitioners have produced on page 41 an internal communication wherein a positive recommendation was made in favour of the petitioners. It is the case of the petitioners that subsequently however the proposal contained in the said recommendation was not accepted by the respondent no.3 and eventually the Government came to pass the impugned order dated 10th January, 2005.

1.2 On account of the above controversy the learned Single Judge of this Court by order dated 16th March, 2005 was pleased to direct that the State Government should explain by filing proper affidavit stating the details on what ground the recommendation made by the Dy. Secretary earlier as per the noting, copy of which is produced at page 42, is not approved.

2. In response to the said order though an affidavit in reply came to be filed by the State Government on 6th April, 2005, I do not find that this position has been satisfactorily explained therein. Learned AGP was therefore, directed to take instructions and throw light on this aspect of the matter. Even before adjourning the matter for the said purpose this Court had noticed that in the reply statement filed by the respondents in para 10 following averments have been made:

"After considering the notings on the file made by the concerned Dy. Secretary pursuant to hearing dated 11/6/2004, the answering respondent thought it fit to verify the actual number of students admitted

in the school and therefore, respondent no.2 was directed to carry out inspection of the petitioner school. Pursuant to the same, inspection of the school was carried out on 6/9/2004 and 25/9/2004 and the number of students found admitted were 11 and 20 respectively. Annexed hereto and marked as Annexure G(1) and Annexure G(2) are the copies of the reports of inspection carried out on 6/9/2004 and 25/9/2004 respectively".

2.1 With the assistance of the officers, learned AGP had further argued the case before this Court today. She also produced the original file for the perusal of the Court. On the basis of the noting on the file she pointed out that after the concerned authority made the recommendation, copy of which is produced at page 41 with the petition, the concerned Minister made a noting that through a surprise check it should be verified as to accuracy of the students (boys and girls) in the Ashram Shala and report should be placed on record. She submitted that pursuant to this direction a surprise check was carried out on the basis of which the impugned order came to be

passed cancelling the recognition of the Ashram Shala.

3. It may be recalled that in the affidavit in reply respondent no.1 has stated that he thought it fit to verify the actual number of students admitted in the school and, therefore, respondent no.2 was directed to carry out inspection of the school. From the record however, it clearly reveals that it was not the opinion of respondent no.1 but that of respondent no.3 to call for such a report of surprise inspection. It is well within the power of respondent no.3 to call for further inquiry if the material on record was found insufficient to decide the issues. It is however difficult to understand why respondent no.1 who disguised the role of respondent no.3 and suggested that he was of the opinion that further inspection is necessary when the record reveals that it was the opinion of the concerned Minister that surprise check should be carried out.

3.1 Only on this ground, I would not have been

inclined to interfere with the impugned order. However, I find that after a positive recommendation by the concerned authority in favour of the petitioner, the materials which are sought to be pressed in service for rejecting the application of the petitioner and for passing the impugned order are the reports collected through surprise check. These reports are produced by respondents at Annexure G-1 and G-2 and letter dated 8/9/2004 and 5/10/2004 respectively. These reports were never supplied to the petitioners. After the entire hearing was over in the matter some material was collected behind the back of the petitioners. Reports on the basis of such exercise collected, taken on record, relied upon and used for the purpose of passing an adverse order against the petitioners. All these things have been done without ever suppling the copies of the same to the petitioners or without giving any opportunity to the petitioners to explain its stand with regard to the same and such procedure adopted would offend the principles of natural justice.

4. The impugned order is, therefore, required to be

quashed which is hereby quashed. Proceedings are remanded to the authorities for fresh consideration and disposal in accordance with law. Now that the petitioners have copies of the reports, it will be open for the petitioners to place its contentions or rebuttal material on record. This may be done within a period of two weeks from today. After taking into account the additional material that may be produced on record the respondents shall pass fresh order in accordance with law expeditiously.

5. With these directions, the petition is disposed of. Rule is made absolute to the above extent. No costs.

(Akil Kureshi, J.)

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